4025.

SUPREME COURT OF THE UNITED STATES.

No. 214.

THOMAS TREMLETT, PLAINTIFF IN ERROR,

vs.

JOSEPH T. ADAMS.

IN ERROR TO THE CIRCUIT COURT, UNITED STATES, FOR THE DISTRICT OF MASSACHUSETTS.

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[Gmaey, Print.]

UNITED STATES, *ss:*

The President of the United States to the judges of the circuit court, holden in and for the district of Massachusetts, greeting:

Because that, in the record and process, and also in the rendering of judgment in a suit before you, or some of you, between Thomas Tremlett, of Boston, merchant, plaintiff, and Joseph T. Adams, of New Bedford, collector of the port of New Bedford, defendant, in a plea of the case, a manifest error has intervened to the great damage of the said Thoma's Tremletts as in his complaint has been stated. And as it is just and proper that the error, if any there be, should be corrected in due manner, and that full and speedy justice should be done to the parties aforesaid in this behalf, you are hereby commanded, that, if judgment thereof be given, then under your seal you do distinctly and openly send the record and process in the suit aforesaid, with all things concerning them, and this writ, so that you have the same before the chief justice and the associate justices of the Supreme Court of the United States, on the first Monday of December next, at Washington, being the present seat of the national government; that the record and process aforesaid being inspected, they may cause to be done thereupon what of right ought to be done.

Allowed by PELEG SPRAGUE.

Witness the honorable Roger B. Taney, esquire, chief justice of the said Supreme Court, at Washington aforesaid, this tenth day [L. S.] of January, in the year of our Lord one thousand eight hundred and fifty, and of the independence of the United States the seventy-fifth.

ISAAC O. BARNES, *Clerk.*

UNITED STATES CIRCUIT COURT,
Massachusetts district, ss:

Twentieth November, A. D. 1850.

I hereby waive citation on the within writ, and acknowledge legal notice on the same.

GEORGE LUNT,
U. S. att'y for the dist. of Mass., and att'y for def't.

UNITED STATES OF AMERICA,
Massachusetts district.

October term, 1849.

At a circuit court of the United States, begun and holden at Boston, for the first circuit and district of Massachusetts, on Monday the fifteenth

day of October, in the year of our Lord one thousand eight hundred and forty-nine, to wit: 31st December, A. D. 1849, before the honorable Levi Woodbury, associate justice; honorable Peleg Sprague, district judge.

THOMAS TREMLETT, of Boston, in the Commonwealth of Massachusetts, merchant, a citizen of Massachusetts, plaintiff,
vs.
JOSEPH T. ADAMS, of New Bedford, in the Commonwealth of Massachusetts, collector of the port of New Bedford, a citizen of Massachusetts, defendant.

In a plea of the case, for that heretofore, to wit, on the first day of June, in the year eighteen hundred and forty-nine, the said defendant being indebted to the plaintiff in the sum of five thousand dollars, demanded and received of the plaintiff by the defendant, under color of a law of the United States for the collection of duties, (and by the plaintiff paid under protest,) and before that time had and received by the defendant to the use of the plaintiff, promised him to pay the same when he should be thereto afterwards requested. Yet he has not paid the same, or any part thereof, though often requested; to the damage of the said plaintiff (as he says) the sum of five thousand dollars. Whereupon the marshal made his return, which is in the words following, viz:

UNITED STATES OF AMERICA,
Massachusetts district, ss.

BOSTON and NEW BEDFORD, *June* 15, 1849.

Pursuant hereunto I have attached a chip, the property of the within named defendant, and I gave him in hand a summons for his appearance in court in this action.
Ser. and trav. $9 75.

CHAS. DEVENS, Jr., *Marshal*.

This action was entered at the present term of this court, when the parties appear by their respective attorneys. And now the said defendant comes, &c., when, &c., and says that he never promised, in manner and form as the plaintiff in his said writ hath thereof declared against him. And of this he puts himself on trial.

By GEORGE LUNT, *his att'y*.

And the plaintiff doth the like. By his attorney.

ALMON W. GRISWOLD.

Whereupon, issue being joined as aforesaid, the cause, after a full hearing, is committed to a jury sworn according to law to try the same, who, after hearing all matters and things concerning the same, return

their verdict therein upon oath, [and] say, the jury find that the defendant never promised in manner and form as the plaintiff in his said writ hath thereof declared against him.

WILLIS BUCKMAN, *Foreman*.

It is therefore considered by the court that the said Joseph T. Adams, recover against the said Thomas Tremlett costs of suit taxed at

And afterwards, to wit, on the tenth day of January, A. D. 1850, the plaintiff, by his attorney, files the following bill of exceptions, which are allowed, viz:

U. S. CIRCUIT COURT FOR THE FIRST CIRCUIT,
Massachusetts district, ss.

October term, 1849.

THOMAS TREMLETT
vs.
JOSEPH T. ADAMS.

This was an action of assumpsit brought against the defendant, collector of the port of New Bedford, to recover the sum of twenty-two hundred and sixty-seven $\frac{77}{100}$ dollars, and interest, excess of duties upon sundry cargoes of coal imported into the port of Wareham in the collection district of New Bedford, by the plaintiff, and claimed to be illegally exacted by said defendant, and paid by said plaintiff under protest.

At the trial of the case before his honor Judge Sprague, the following facts were admitted by the defendant, viz:

1st. That in the months of September and October, 1846, the plaintiff, Thomas Tremlett, a merchant of Boston, imported from Pictou, in Nova Scotia, into the port of Wareham, in the collection district of New Bedford, nine cargoes of coal as follows, viz:

	Chaldrons.	T.	Cwt.	Qrs.	Lbs.	Duty charged.	Money deposited.
Brig Indus - -	121 1-6	157	13	2	12	$979 44	$985 00
Schr. Congress -	132	173	19	0	16	394 42	315 00
Brig Mary Sophia -	116 1-6	153	10	2	19	968 68	980 00
Barque Acadia -	249 11-12	329	7	0	10	576 37	575 00
Brig Chas. Edward -	153 3-12	210	19	0	26	353 43	360 00
Schr. Armida - -	161 5-12	212	14	1	26	372 27	375 00
Brig Hudson - -	161 2-12	212	7	3	16	371 69	375 00
Brig China - -	173 8-12	228	17	1	12	400 52	400 00
Brig Moselle - -	289 8-12	249	19	0	8	457 32	438 00
	1,458 9-12	1,922	8	1	26	$3,364 14	$3,403 00

Amounting in the aggregate to 1,458 $\frac{9}{12}$ chaldrons, or 1,922 tons, 8 cwt., 1 qr., 26 lbs., as appears by the custom-house records.

These several cargoes of coal were shipped at Pictou, for the port of Wareham, a port of delivery only; and upon the arrival at that port of the first mentioned vessel, the brig Indus, on or about the third of September, 1846, the plaintiff made application at the custom-house in New Bedford, to the defendant, Joseph T. Adams, then collector at said port, to enter said coal for warehousing at Wareham aforesaid, under the provisions of the act of Congress, entitled "an act to establish a warehousing system, &c.," passed August 6th, 1846. But the defendant refused to allow the plaintiff to enter said coal for warehousing as aforesaid, under the act aforesaid, because said Wareham was not a port of entry, but a port of delivery, and required him, if he would land said coal at said Wareham, to enter the same under the act for the collection of duties, passed August 30, 1842, and to deposit $285 to cover the duties which might be found to be legally due and payable thereon. The plaintiff, in order that said vessel might be permitted to discharge her cargo, complied with this requisition, first entering the following protest in writing:

"I protest against paying duties, wishing to warehouse the coal per brig Indus, from Pictou;" and signed "Thomas Tremlett, by his attorney, Jacob Parker."

The usual permit was then granted by the collector to land the coal from said vessel at said Wareham, and the coal was accordingly landed, and upon the arrival at said Wareham of the other cargoes of coal by the several vessels above named, said plaintiff made like applications to the defendant at the collector's office at New Bedford, to enter each cargo for warehousing under said act of August 6th, 1846, at Wareham aforesaid.

But the defendant in like manner, as in the case of brig Indus, refused permission to warehouse as aforesaid, and required the plaintiff to make the same entry as in that case, and to deposit a sum of money upon the entry of each cargo, sufficient to cover the duties which might be found to be legally due and payable thereon under the provisions of the act of August 30th, 1842; the plaintiff first entering a protest in writing in each case, and upon the entry of each cargo, in manner and form as in case of the brig Indus above mentioned; and said coal was thereupon landed, and deposited in the same manner as that per brig Indus.

2d. That all of said coal, landed at said Wareham from the above named vessels, was deposited in one pile, and remained in the place where it was originally deposited until after December 19th, 1846.

3d. That the aggregate sum deposited with the defendant by the plaintiff to cover the amount of duties on the several cargoes of coal above mentioned was $3,403, and the duties on said coal, computed under the Tariff act of August 30, 1842, would amount to $3,364 $\frac{14}{100}$; that by the act of July 30, 1846, the duties on the coal in question would amount to $1,135 $\frac{23}{100}$.

4th. That the brigs Indus and Mary Sophia were British vessels; that it has been the invariable practice of the collectors at New Bedford, for more than twenty years, to allow foreign vessels the same rights

and privileges, as to unlading and discharging their cargoes at the port of Wareham, that are granted to American vessels, and that no objection was made or intimated by the defendant to the plaintiff to his landing the cargoes of said "Indus" and "Mary Sophia" at said Wareham.

5th. That said Wareham is the principal port, in the collection district of New Bedford, where coal is imported for consumption.

6th. That the defendant, on or before the 19th of December, 1846, delivered to the plaintiff's attorney a statement of the balance due to the plaintiff for money deposited, over and above the amount of duties claimed on the nine cargoes of coal aforesaid, amounting to $38 86, and offered then to pay the same to M. Parker, the plaintiff's attorney, which he declined to receive; and that on the 13th of November, 1849, Mr. Adams, the defendant, tendered the same amount in specie to Thomas Tremlett, the plaintiff, at his office in Boston, which he refused to receive, and informed the defendant that in 1846 he instructed Mr. Parker, his attorney, not to receive it.

7th. That the paper hereto marked A, is a true copy of the commission under which D. Nye acted as an officer of the revenue from the date of the commission till after January, 1849; and that the paper marked B, annexed hereto, is a true copy of an official letter, received by D. Nye from said defendant, at or about the time it bears date, and that the papers annexed, marked C and D, are true copies of official letters received by the defendant from the Secretary of the Treasury of the United States.

Boston, December 13th, 1849.

Copy A.

Rodney French, collector of the customs for the district of New Bedford, to all who shall see these presents, greeting:

Know ye, that reposing special trust and confidence in the integrity, diligence, and discretion of David Nye, by virtue of authority in me vested by the laws of the United States, I do hereby nominate, constitute, and appoint, the said David Nye, deputy collector, inspector, gauger, weigher, and measurer for the port of Wareham, and do hereby authorize and empower him to execute and fulfil the duties of the said office, with all the rights and emoluments thereto legally appertaining, until this instrument shall be legally revoked.

In witness whereof I have hereunto affixed the seal of the custom-house of the district aforesaid. Given under my hand, the [SEAL.] third day of October, in the year of our Lord one thousand eight hundred and forty-three, and of the independence of the United States the sixty-eighth.

(Signed) RODNEY FRENCH, *Collector*.

Copy B.

COLLECTOR'S OFFICE,

District of New Bedford, August 22d, 1848.

SIR: I have recently been authorized, by the Secretary of the Treasury, in conformity with law, to enlarge your powers, as deputy collector for the port of Wareham, for the accommodation of the business men in Wareham and vicinity.

In addition to the powers and practices heretofore legally exercised by you, you are hereby authorized to act under the following regulations, to wit:

1st. To receive entries and grant clearances to vessels engaged in the coasting trade, whether they sail under register or enrolment and license.

2d. To grant clearances to vessels bound to foreign ports.

3d. To issue enrolments and licenses to vessels engaged in the coasting trade and fisheries, the blank forms to emanate from this office, with the signatures and custom-house seal of the collector of this district, which will be furnished to you, in advance, from time to time, as wanted, in sufficient numbers to keep you always well supplied.

Your importers are also hereby authorized to warehouse coal, iron, and any other goods, at Wareham, as fully, and to the same extent, that they can be warehoused at New Bedford, under the Warehousing act of 1846.

In addition to a set of papers duly signed and sealed, duplicate sets without sign or seal will be furnished you, to preserve as copies or records.

You will keep these papers with care, and account to me for them monthly, so that they may be embraced in our periodical returns to the Department, in Washington; thus saving the trouble, both here and at Washington, of having distinct sets of returns to be adjusted.

You will account to me for all fees and emoluments thus received, according to law.

You will thus be clothed with all the power and authority, in the fullest manner, of a full collector of any district, with the single exception of not being authorized to enter vessels from foreign ports having cargoes of dutiable goods. In regard to these vessels, it will be necessary, at least till further orders, for the captains to come to the custom-house, and enter their vessels, as in times past; but their vessels may be cleared by you, in accordance with regulations No. 2. Owners of cargoes as heretofore, if they so wish, can enter their cargoes here by an authorized agent, and thus save the trouble of coming to the custom-house.

Vessels may commence discharging, in custody of the deputy or inspector, as soon as they arrive, as the practice has been.

I trust that this arrangement will prove satisfactory to the enlightened and liberal minded business men of your place, and am sure that it will remove obstacles heretofore experienced in your place. Ware-

ham has thus decided advantages over Westport, Dartsmouth, Fairhaven, Mattapoisett, Sippican, Pocasset and other out ports in this and in most other districts in the United States.

I shall from time to time give you such further instructions, in the premises, under these general regulations, as may be necessary, and with the constant determination to give every possible facility to the business operations of your place and vicinity.

I enclose herewith blank forms, duly signed and sealed, as follows, six enrolments, six licenses, six crew lists, six clearances, six bills of health, together with duplicates, in the same number as records, not signed nor sealed, and also blank forms of bonds to be executed, the receipt of which please acknowledge by mail.

The oaths to the clearances, crew lists, &c., will be taken before you, and duly certified.

Charge postage to this office.

Respectfully, sir, your ob't serv't,

(Signed.) JOS. T. ADAMS, *Collector*.

D. NYE, ESQ., Wareham.

Copy C.

Secretary of Treasury to J. T. Adams, collector.

TREASURY DEPARTMENT, *August* 24, 1846.

SIR: Your letter of the 24th instant is received, submitting, for the consideration of the Department, a proposed arrangement in regard to the storage of coal imported since the passage of the act "reducing the duty on imports, and for other purposes," approved 30th July, 1846. This arrangement proposes to allow coal to be deposited, in securely-enclosed yards, at places beyond the limits and distant some miles from the port of entry.

This arrangement cannot be sanctioned, as no article can be allowed to be warehoused at any place without the limits of a port of entry.

I am, very respectfully, your obedient servant,

(Signed) R. J. WALKER,

Secretary of the Treasury.

JOSEPH T. ADAMS, esq.,

Collector of the Customs, New Bedford.

Copy D.

TREASURY DEPARTMENT, *July* 5, 1849.

SIR: I have to acknowledge the receipt of your letter of the 21st instant, advising this Department that a suit had been brought against you, as collector of the customs, in the United States circuit court at Boston, by Thomas Tremlett, merchant of that place, consequent on your having refused to allow certain coal imported by him from Pictou, in Nova Scotia, in September and October, 1846, to be warehoused, under the act of Congress of 6th August, 1846, at Wareham, a port of delivery within the collection district of New Bedford.

Your refusal in this case being in strict pursuance of the instructions of this Department of the 27th August, 1846, you are authorized to place the case in the hands of the United States district attorney for the district of Massachusetts, whose official duty it is to defend the suit, and who will be accordingly instructed by the Solicitor of the Treasury.

Very respectfully, your obedient servant,

(Signed) W. M. MEREDITH,
Secretary of the Treasury.

JOS. T. ADAMS,
Late Collector of the Customs,
New Bedford, Massachusetts.

Upon those facts the plaintiff, by his counsel, requested the court to rule and instruct the jury—

1st. That the right or privilege of warehousing goods at any ports or places within the United States is regulated entirely by the laws of Congress, which specify the ports and places at which, and the manner in which, such warehousing shall be permitted, and that no discretion as to the selection of such ports or places, or as to the manner in which such warehousing shall be allowed, is reposed in the collector or any other executive office.

The plaintiff further requested the court to rule and instruct the jury—

2d. That by law there is no distinction as to the exercise of such right of warehousing between ports of entry and ports of delivery, and that if the plaintiff at the time had a right, under the existing laws, to warehouse his goods in a port of entry in any district in the United States, he had equally a right to warehouse them at any port of delivery in such district, upon complying with the requirements of the laws regulating the warehousing of goods.

The plaintiff further requested the court to rule and instruct the jury:

3d. That the plaintiff being unlawfully prevented from warehousing his goods as aforesaid, and required to pay duties upon them according to the rates established by the Tariff law of 1842, ought to recover of the defendant the difference between the amount of duties chargeable under the Tariff act of 1842 and that under the Tariff act of 1846, and interest thereon from the time of payment of the several sums.

The plaintiff further requested the court to rule and instruct the jury:

4th. That if upon the facts the plaintiff could not recover the whole of the difference between the amount of duties properly chargeable under the act of 1842, and the amount properly chargeable under the act of 1846, he was entitled to recover the sum of $38 86, being the surplus in the defendant's hands over and above the amount of the duty properly chargeable according to the act of 1842. But the court refused to give the instructions so prayed for; but, on the contrary thereof, did rule and instruct the jury that the plaintiff could not maintain his action, nor recover either of said sums of money or any part thereof; to

all which rulings and instructions the plaintiff excepts, and prays that his exceptions may be allowed.

PELEG SPRAGUE, [SEAL.]
Judge, &c.

UNITED STATES CIRCUIT COURT,
Massachusetts district.

I, Isaac O. Barnes, clerk of the circuit court of the United States, for the first circuit, district of Massachusetts, do hereby certify, that the foregoing is a true copy of [the] record of the case, Tremlett vs. Adams.

In testimony whereof I have hereunto set my hand and affixed the seal of the said circuit court, this twentieth day of Novem- [SEAL.] ber, and of the independence of the United States the sev-ty-fifth.

The words "to wit, 31st December, A. D. 1849," on 2d page, being first inserted.

ISAAC O. BARNES,
Clerk of U. S. ct. ct.